

APR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DARNELL OTIS McGARY,

Plaintiff - Appellant,

v.

TIM McBATH; et al.,

Defendants - Appellees.

No. 05-35730

D.C. No. CV-05-05284-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted April 13, 2006**

Before: SILVERMAN, McKEOWN, and PAEZ, Circuit Judges.

Washington state civil detainee Darnell Otis McGary appeals pro se from the district court's order dismissing pursuant to 28 U.S.C. § 1915(e)(2) his 42

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 action alleging various Washington state employees conspired to violate his constitutional rights. We have jurisdiction pursuant to 28 U.S.C.

§ 1291. We review de novo, *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and we affirm.

The district court properly dismissed McGary's action as frivolous because his amended complaint lacked an arguable basis in either fact or law. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

AFFIRMED.